Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion Into the Operations and Practices of Bidwell Water Company and Its Owners and Operators, Thomas and Vicki Jernigan, and Order to Show Cause Why Findings Should Not Be Entered by the Commission Under Public Utilities Code Section 855.	Investigation 01-10-002 (Filed October 2, 2001)

Stephanie Martinez, Attorney at Law, and Thomas Joseph Jernigan, for Bidwell Water Company and its Owners and Operators, Thomas and Vicki Jernigan, respondents.

Carol A. Dumond, Attorney at Law, and Mark Bumgardner, for the Commission's Water Division.

OPINION ON ORDER TO SHOW CAUSE CONCERNING FINDINGS UNDER PUBLIC UTILITIES CODE SECTION 855

Summary

The Commission determines that a showing has not been made sufficient for the Commission to find, under Pub. Util. Code §855, that Bidwell Water Company (Bidwell) is unable or unwilling to adequately serve its ratepayers, or has been actually or effectively abandoned by its owners, or is unresponsive to the rules of the Commission. Investigation (I.) 01-10-002 is closed.

Background and Procedural History

The Commission issued its Order Instituting Investigation and to Show Cause (Order) on October 2, 2001.[1] The Order names Bidwell and its owner/operators, Thomas Jernigan and Vicki Jernigan, as respondents. Bidwell is a small family-owned water company serving the town of Greenville and its environs in Plumas County.

The Order directs the respondents to show cause why the Commission should not enter findings, based upon their conduct, that,

1. Bidwell is unable or unwilling to adequately serve its ratepayers; or
2. Bidwell has been actually or effectively abandoned by its owners; or
3. Bidwell is unresponsive to the rules or orders of the Commission.

[1] Ordering Paragraphs (O.P.s) 2 and 3 of the Order state that this matter is set solely on the Order to Show Cause why the Commission should not make the determination necessary to petition the Superior Court for the County of Plumas (Court) for appointment of a receiver under Pub. Util. Code § 855. The Order states that the underlying violations of Commission orders have already been established. Accordingly, this proceeding was categorized as ratesetting, and that categorization was upheld on appeal in Decision (D.) 01-11-030 (November 8, 2001).

The Order makes it clear that the Commission seeks the findings as a predicate to petitioning the Court for an order appointing a receiver pursuant to Pub. Util. Code § 855.[2] O.P. 1 required the respondents to appear before the Commission on the show cause question at 9:30 a.m. on October 30, 2001. The order was served upon the respondents and their attorney, and additional notice of the hearing was subsequently mailed to the parties.

The hearing was held on October 30 pursuant to the notice and order. The Commission appeared through its Water Division (WD). Both sides presented evidence, and each side was permitted an opportunity to submit a post-hearing exhibit to offer corrections or additions to the Commission's Report on the Financial Condition of Bidwell (September 26, 2001) that has been prepared under the direction of the Legal Division.[3] Two rounds of briefs were filed, and the proceeding was submitted on January 4, 2002.

Discussion

Section 855 provides in relevant part,

> Whenever the commission determines, after notice and hearing, that any water … corporation is unable or unwilling to adequately serve its ratepayers or has been actually or effectively abandoned by its owners, or is unresponsive to the rules or orders of the commission, the commission may petition the superior court for the county within which the corporation has its principal office or place of business for the appointment of a receiver to assume possession of its property

[2] All statutory references are to the Public Utilities Code unless otherwise noted.

[3] This report was received as Exhibit (Ex.) 13 at the hearing. Each party submitted a post-hearing exhibit that has been received for the record without being marked numerically.

> and to operate its system upon such terms and conditions as the court shall prescribe.[4]

In fashioning the Order the Commission restated the three alternative grounds for petitioning the Court for appointment of a receiver as findings the Commission would make unless the respondents showed good cause why those findings should not be entered.

Reducing these statutory grounds to their basic elements, the factual issues before the Commission are:

1. Is Bidwell unable to serve its ratepayers adequately?
2. Is Bidwell unwilling to serve its ratepayers adequately?
3. Have the Jernigans actually abandoned Bidwell?
4. Have the Jernigans effectively abandoned Bidwell?
5. Is Bidwell unresponsive to the rules of the Commission?
6. Is Bidwell unresponsive to the orders of the Commission?

If the answer to any of these questions is affirmative, the Commission may petition the Court for appointment of a receiver for Bidwell.

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[4] The final sentence of Section 855 states, "The court shall provide for disposition of the facilities and system in like manner as any other receivership proceeding in this state," suggesting that the same standards and underlying principles apply in all California receivership proceedings.

Commission Rule of Practice and Procedure 57 ordinarily requires Commission staff to make the initial presentation in an investigation. In this proceeding both Rule 57 and the nature of the issues required the initial burden to be placed on WD to support the contemplated findings at the hearing. Assuming WD satisfied its burden by presenting substantial evidence that one or more of the required findings should be made, the burden shifted to the respondents to show cause why they should not. Thus, we must first decide whether WD satisfied this initial burden.

Did WD Satisfy Its Initial Burden?

At the hearing WD presented evidence that Bidwell's mains are old and subject to periodic failure, requiring partial outages to effect necessary repairs. WD presented no evidence that these outages exceeded any ascertainable standard of adequacy, or that Bidwell's water failed to meet any health, fire protection, or other standard that might indicate that it is not serving its ratepayers adequately. WD did not present any testimony by ratepayers, so we have no basis for finding that its ratepayers regard the service they are receiving as inadequate. WD elicited no testimony from the respondents that they were unwilling or unable to provide service to any standard of adequacy; in fact, the testimony WD obtained from the respondents' witnesses was quite to the contrary.

The only substantial testimony on this issue offered by WD in its case in chief was that of the Commission financial examiner who prepared Ex. 13. On direct examination he gave the following testimony:

> Q. . . . , but are you saying that Bidwell is currently able to serve its customers willingly -- I mean adequately?
> A. From -- yes, I am saying that.
> Q. Okay.

A. They are -- their operation seems to be on the border right now. When we were up there at different periods of time, pipes would break. Customers would not have water delivered to them. This seemed to be common.

Q. Do you consider that adequate service?

A. Not if customers go without water for hours at a time.

Q. Is it common for customers of California water companies to go without water for hours at a time?

A. Not as current [sic] as Bidwell is having this problem.

Q. Would you say from your review that Bidwell was currently willing to serve customers adequately? And I understand that you can't get into somebody else's mind, but have you seen evidence that Bidwell is currently willing to serve customers adequately?

A. I - - I think what I have observed is -- is contradictory. You have the statements which are made by Mr. Jernigan, versus them trying to actually, you know, physically keep the facilities going.

Could I have that question again, so that I make sure that I make sure I answer it correctly?

* * *

[The question is read back to the witness by the reporter.]

A. And my answer was that basically there is contradictory evidence, so I'll stick with that response.

Q. So, to sum up, you are not sure that Bidwell is willing or unwilling -- whether Bidwell is willing or unwilling to serve its customers adequately?

A. To my knowledge, they are currently serving their customers adequately, but, you know, in discussions which I've had with Mr. Jernigan, he's indicated that he feels he . . . doesn't have enough money to operate how he feels the company should be adequately operated. And he is disturbed with that. And he has expressed concern whether he will be able to continue to operate the company as it is currently operating with the finances which he currently has. [Transcript (Tr.) 36:9 – 37:27]

At best, this testimony was equivocal, falling short of the substantial evidence required to support a finding that Bidwell is unable or unwilling to serve its ratepayers adequately. WD has offered no evidence that service presently violates any ascertainable standard imposed by this agency or any other. The only suggestion of inadequate operation appears to be a feeling expressed by Mr. Jernigan that he would like to have the resources to provide service at a higher level than now exists, even though that service has not been shown to be inadequate. His statements to WD's witness certainly do not demonstrate an unwillingness to provide adequate service, but indicate quite the opposite — that with improved financial resources Bidwell would strive to improve its service to customers. Accordingly, we cannot make the finding necessary to support the first ground for petitioning for appointment of a receiver.

As to the issue of whether the Jernigans have actually or effectively abandoned Bidwell, WD presented no evidence to indicate that the Jernigans have done either. The testimony of WD's witness clearly demonstrates that the Jernigans continue to operate Bidwell as they have for more than 25 years, procuring, treating, and distributing water, maintaining the plant, and performing normal billing and administrative activities. WD's case relies upon circumstantial evidence that Jernigan has formed an intent to cease operating the company or place it into bankruptcy, implying that ratepayers will lose their service altogether. We cannot find that the Jernigans have effectively abandoned Bidwell on the basis of this evidence.

WD's case is based also upon statements made orally and in writing by its president, Thomas Jernigan, by Bidwell's regulatory consultant, and by its attorney, to the effect that the owners are considering the possibility of filing

for bankruptcy if they cannot obtain rate relief, or selling the company to a prospective buyer. On one occasion, in response to a letter from a Commission attorney alleging that Bidwell was operating in violation of Commission orders, Jernigan left a recorded telephone message in which he said,

> If you'd give me a call back as soon as you can, I'd like to talk to you about closing this goddam water company down and we'll settle the whole thing out; in other words, you guys won't have to worry about it and I won't either. [Ex. 9.]

Although the tone of this message, as well as that of other communications by him, by the company's attorney, and by its consultant, reflect exasperation with the problems experienced with the company's operation and regulatory compliance, these remarks fall short of an unequivocal communication by the owners that they are walking away from their public service obligation. Again, the attitude of the owners is best shown by the testimony of WD's witness:

> Q. Have you seen any evidence that would lead you to believe that Bidwell is faced with abandonment by Mr. Jernigan?
>
> A. My response would be like the other question, where I have contradictory items where, you know, the appearance is that he is going to -- he is trying to keep the -- the utility operating, but, you know, he has indicated a couple of times to me from the things I've read that, you know, he's not sure he can continue to operate that company.
>
> Q. Has Mr. Jernigan ever told you that he was considering going out of business?
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> * * *
>
> A. . . . I remembered hearing terms such as "bankruptcy" in discussions with him. I'll just stick with that, even though there's something else in the back of my mind in discussions I had with Mr. Jernigan, but I can't remember it clear enough to give you an answer. [Tr. 37:28 – 38:23]

Appointment of a receiver is a drastic remedy. In Bank of Woodland v. Stephens, 144 Cal 659, 660 (1904), the California Supreme Court called the appointment of a receiver, which "involves the taking of a defendant's property from his possession, . . . a measure more violent and drastic than an injunction." This characterization has no less vitality today than it did when the Court first expressed it. Without a doubt receivership is more far reaching than selective judicial enforcement of our orders, and for this reason we regard Section 855 solely as a means to ensure the continuity of operation of a water utility when its owners have actually walked away from providing service, or by word or action indicate unequivocally that they intend to do so imminently.[5]

The Jernigans' conduct falls substantially short of this criterion. They continue to deliver water to Bidwell's customers, collect its revenues, make its payroll, and pay its bills. WD has offered no substantial evidence of any prospect that they will cease to do so, unless they sell the company with Commission approval. We read the quoted portion of Ex. 9 in this context, and not as an indication that they intend to "pull the plug" on continued provision of service. Even if the Jernigans were to put the company into bankruptcy in order to remedy its financial ills, this would not necessarily result in cessation of service to ratepayers, as recent Commission experience demonstrates.

By comparison, seeking the appointment of a receiver is a draconian measure available to the Commission to prevent imminent cessation of service,

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[5] Section 855 appears to have been added to the Pub. Util. Code as part of a legislative revamping of Section 564 of the Code of Civil Procedure, which provides for receivership as an extraordinary remedy in various kinds of judicial proceedings. The enactment of Section 855 did not liberalize, much less overturn, the judicial attitude that receivership is a "violent and drastic" remedy.

or to remedy an indefinite interruption of service when the owners have simply walked away from their responsibilities. To make such a finding here would require acts or omissions on the Jernigans' part that exceed what we have seen so far. Accordingly, we cannot make the finding necessary to support the appointment of a receiver on the basis of abandonment of the company.

Finally, we turn to the issue of whether WD met its burden of showing that Bidwell is unresponsive to the Commission's rules or orders. The gravamen of WD's case is that Bidwell has failed to deposit all of the collected surcharge for repayment of a Safe Drinking Water Bond Act (SDWBA) loan it has obtained into a surcharge account, as required by issuance of the final order in I.97-04-013. In sum, that investigation determined that Bidwell had for some time failed to deposit the surcharge into its trust account for repayment of the loan, as required by D.90714, in which we initially granted Bidwell authority to obtain the loan. To remedy Bidwell's omission to do so, the modified final order in I.97-04-013 required Bidwell to credit its SDWBA account with all past surcharge collections, plus interest (estimated by the Commission to be $22,000 per year over the SDWBA collection), and to reduce the surcharge prospectively until the full credit is made. The Commission also ordered Bidwell to file an advice letter implementing the decision within 60 days of the final order, and to pay a $1000 fine within that period.

Bidwell failed to comply with the terms of the order by not implementing the adjustment and paying the fine within its specified deadlines. In response the Commission issued Resolution (Res.) W-4243, implementing the decision by changing Bidwell's tariff to reflect a decrease in the surcharge. Bidwell filed an application for rehearing, which was denied on February 23, 2001, by D.01-02-079. Since that date, Bidwell has reduced its surcharge as required

in Res. W-4243, but has still not complied with the repayment provisions on the grounds that the company believes it lacks the necessary cash flow.

WD's evidence of Bidwell's noncompliance is largely uncontested. Indeed, on cross-examination Thomas Jernigan admitted that Bidwell used some of the SDWBA surcharge funds to operate the company (Tr. 52:21-22). It is also undisputed that Bidwell was tardy in paying the fine and providing ratepayers with notice of the new rates. These facts demonstrate that Bidwell did not fully comply with certain aspects of Commission orders. On the other hand, WD's own testimony was that Bidwell did comply with other terms of the same orders, albeit belatedly in certain instances. This raises the question whether Bidwell is truly unresponsive to our orders within the meaning that term should be given in Section 855, or simply not in full compliance with our orders.[6]

As explained above, receivership under Section 855 is a drastic remedy. We may invoke it as a last resort when we find that a water utility has ceased providing service to its ratepayers, or imminently threatens to stop service, but we must construe the term "unresponsive," as used in Section 855, in a manner that is consistent with this overarching principle. We must also interpret it in a manner harmonious with the other two grounds for seeking appointment of a receiver. Both of these alternative grounds require a high degree of proof of unambiguous conduct by the utility indicating that it is terminating (or has terminated) the performance of its public service obligations to ratepayers, *i.e.*, a showing of objective inability to perform; an unequivocal communication of unwillingness to perform; actual abandonment of the business; or conduct that

[6] This conduct may also violate certain of the Commission's rules, although this argument was not raised by CSD.

by its nature is tantamount to abandonment because it is clearly inconsistent with the ongoing operation of the system. By extension we must construe "unresponsive" to signify total disregard for, express repudiation of, or substantial and knowing refusal to comply with, our orders. If, on the other hand, we construed "unresponsive" to allow us to seek appointment of a receiver whenever a water utility simply did not comply with our orders, we could too easily resort to the Superior Court to carry out our regulatory responsibilities by forcing a change in a utility's management or ownership. We do not believe this is a result the Legislature intended when it enacted Section 855.

Ex. 13 describes Bidwell's compliance with Commission orders as, at best, "marginal and reluctant." Although compliance at this level is troubling and indicates a need to take further steps to clarify what Bidwell must do to carry out its compliance responsibilities, it does not justify the appointment of a receiver. On the record before us, we cannot find that Bidwell's behavior rises to the level of unequivocal disregard for, or rejection of, our authority. Accordingly, we cannot determine that Bidwell is unresponsive to our rules or orders within the meaning of Section 855.

For the foregoing reasons we conclude that WD did not bear it's initial burden of showing grounds for the Commission to seek judicial appointment of a receiver under Section 855. That statute requires the demonstration of a much more imminent threat of cessation of service to the ratepayers than was made in this record to justify judicial intervention and the disposition of Bidwell's facilities and system under court supervision.

Even If We Found That WD Satisfied Its Initial Burden, the Respondents' Showing Successfully Rebutted WD's Showing, and Showed Cause Why The Commission Should Not Seek Judicial Appointment Of A Receiver.

To allay any doubt that appointment of a receiver is unjustified, or any concern that public health or safety may be in jeopardy if such action is not taken, we also conclude that the respondents satisfied their burden of showing that there is cause not to seek appointment of a receiver. This evidence reinforces our determination that appointment of a receiver for Bidwell is unjustified and unnecessary.

Thomas Jernigan testified that the company is "absolutely" able to serve its customers adequately at this time. [Tr. 49: 20-22.] He also testified that he had no present intention of closing the company down. (*Id.*: 14–16.) His testimony is credible, and WD did not successfully discredit it. The company's water quality is excellent, and Jernigan described the filter plant as being "like an operating room" when the WD witness visited it, an assertion that WD did not contest. (*Id.*, 23–28.)

Jernigan did admit to austerity in making repairs to the system's lines, but attributed the company's failure to undertake major replacements to the inadequacy of Commission-authorized rates. As he explained, if a section is not reparable, the company cuts the line and puts a new piece in it rather than replacing the entire line. [Tr. 58: 15–19.] Nevertheless, the company until recently went for as long as five years without an outage in any part of the system, except during a major storm and flood in 1997. [Tr. 58: 26-59; 60: 1-4.] Occasional outages have occurred recently because of repairs to broken water lines, but such occurrences do not indicate to us a major breakdown of the system.

Darren Jernigan, Thomas Jernigan's son and the company's vice president, reiterated "absolutely" his intention as a manager to continue the operation of the company, and the ability to do so. [Tr. 66: 6-9, 21; 25-26.] He described total outages as being rare. [Tr. 64:1.] Partial outages may result from spot repairs to pipes in the system, but these repairs are usually of short duration and are done at night whenever possible. Like his father, Darren indicated that there is a need for rate relief to ensure the long-term survival of the company, but did not suggest that any acute problems threatened the imminent cessation of service.

The company's management consultant testified that all of the company's loan payments are current, and that its two private sector loans, totaling nearly $16,000, should be paid off early next year under the company's present financial circumstances. [Tr. 74: 18-75: 6.]

Taken as a whole, these facts form a credible picture of a company that, although struggling, is far from the brink of shutting down, voluntarily or otherwise. Its compliance problems principally appear to be in the nature of accounting errors and unauthorized diversion of revenues to meet the company's operating expenses that the respondents openly admit. Although we do not condone these activities, nor the occasionally uncivil remarks the owner and the company's consultant have directed at Commission staff, the company's showing nevertheless rebutted any potential showing by WD that it is a candidate for receivership. More selective means are available to the Commission for remedying the company's ills than to transfer possession and control to an unspecified third party, and lesser sanctions are available to redress improper treatment of our staff by Bidwell or its owners.

From all appearances in the hearing room the company and its owners are earnestly willing to cooperate with the Commission to achieve compliance and

place the company in financial and regulatory condition to be sold (with Commission approval) to a qualified buyer. Thomas Jernigan seemed genuinely contrite about a vulgar remark he directed to a Commission attorney (Ex. 9), and demonstrated a desire to respond to every regulatory requirement imposed on the company if the necessary financial resources become available. Even with the parties' late-filed exhibits, the evidence is murky as to whether those resources are actually available with its present rates, or whether full compliance is not possible at this time because our previous ratemaking decisions were improvident for some reason that is not apparent to us. It is one thing to find that Bidwell is not in compliance with regulatory requirements, but quite another to determine that it is "unresponsive" to our rules or orders. We believe the parties should have another opportunity to reexamine these inconsistencies and work out their differences.

There are less drastic means at our disposal to seek the aid of the court and secure compliance with our previous orders than by depriving Bidwell's owners of possession of the company. Cause for the Commission not to take such action has been shown, as the basis for making the required statutory determination does not appear to exist.

Comments on Draft Decision

The proposed decision (PD) of the Administrative Law Judge was mailed to the parties on March 12, 2002, in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. WD filed comments on the PD on April 2.[7] No comments on the PD were filed by the respondents, but a letter in response to Commissioner Duque's proposed alternate conveying a proposed compliance plan was filed on behalf of Bidwell. That letter does not address the content of the PD, and we consequently do not discuss it here. No reply comments were filed.

WD claims that the PD contains several legal errors. First, WD claims that the ALJ erroneously placed the burden of proof on WD to demonstrate that statutory grounds exist for an order allowing the Commission to petition the court for a receiver. WD asserts that the Commission had already made the statutorily required determination, and that the Commission order should issue unless the respondents showed cause why it should not. WD's assertion is flawed, and we will not modify our order on this basis.

Section 855 permits the Commission to petition for a receiver whenever it "determines, after notice and hearing, that [one of the three statutory tests has been satisfied.]" This statutory language mandates the due process protections of a noticed hearing before the Commission may determine that any of the

[7] These comments were filed by WD, rather than Consumer Services Division (CSD), as initially indicated in the appearances, because counsel for WD had filed her appearance form incorrectly. For the sake of consistency, we have changed the references to CSD that originally appeared in the PD to reflect this change. Also, WD's comments were erroneously identified as Comments on the Presiding Officer's Decision (POD). This proceeding was categorized as a ratesetting, so these comments will be treated as Comments on the PD.

statutory grounds exist for seeking a receiver. No hearing was previously conducted on those issues here, and contrary to WD's assertion, the declaration of a Commission attorney attesting that the respondents are in violation of Commission orders does not satisfy the statutory requirement or alter WD's burden of proof.

If, as WD argues, the only purpose of the hearing was to allow the respondents an opportunity to show why the Commission should *not* petition for appointment of a receiver, the statute would be meaningless. The burden of proof would be reversed, and the respondents, being presumed guilty, would have to prove a negative. This is simply not the law.

Whether or not the Commission intended to do so, it may not, by the device of calling its order a show cause order, reverse the roles of the parties. Neither the Commission nor WB may contort the statutory language to deprive the respondents of control over their property through receivership. Moreover, even if the Commission's previous orders are construed as a determination that the respondents were unresponsive to Commission rules and orders, at the hearing they did show cause why the Commission should not have a receiver appointed on such grounds by demonstrating their good faith belief in the necessity of diverting SDWBA funds to pay current expenses.

WD also claims that it was taken by surprise, and had an inadequate opportunity to prepare for the hearing, because the ALJ required WD to put on its case first. We do not perceive that WD was in any way prejudiced by the order of presentation. First, as we discuss above, due process required WD to present its case initially so the respondents would not have to prove a negative. Second, Rule 57 placed all parties on notice in this proceeding, as in others of its

type, that the ALJ could vary the order of presentation in the exercise of his discretion. We do not find that his actions constitute error.

WD claims the proposed conclusion of law that we cannot determine Bidwell is unresponsive to our rules and orders is "legal error on its face, as [we had] already made the finding in [our] previous proceedings." This is not true, as no such determination had been made in any other proceeding. Had we previously made such a determination after a hearing, there would obviously have been no need under Section 855 to issue our order in this one.

Finally, WD takes issue with our determination regarding Bidwell's ability and willingness to serve its ratepayers adequately. This simply amounts to a disagreement with the ALJ's assessment of the comparative credibility of the witness' testimony, and is impermissible argument.

We have made nonsubstantive revisions to certain parts of the opinion for the sake of clarification. We have not altered the findings or conclusions, or our ultimate determination not to seek judicial appointment of a receiver.

Findings of Fact

1. Bidwell Water Company is a water corporation within the meaning of the Public Utilities Code.

2. Bidwell's principal office and place of business is in Plumas County, California.

3. The Commission conducted a hearing on October 30, 2001, to determine whether Bidwell is unable or unwilling to adequately serve its ratepayers, or has been actually or effectively abandoned by its owners, or is unresponsive to the rules and orders of the Commission.

4. Timely notice of the hearing was served upon respondents Bidwell and its owners, Thomas and Vicki Jernigan.

5. The Commission's CSD and the respondents appeared at the hearing and presented evidence as to whether there is good cause to enter findings that would support a determination under the foregoing paragraph 3 to seek judicial appointment of a receiver.

Conclusions of Law

1. On the basis of the record the Commission cannot determine, as a matter of law, that Bidwell Water Company is unable or unwilling to adequately serve its ratepayers, or that it has been actually or effectively abandoned by its owners, or that it is unresponsive to the rules or orders of the Commission, within the meaning of Section 855 of the Public Utilities Code.

2. The Commission should not petition the Superior Court for the County of Plumas for the appointment of a receiver to assume possession of, and to operate, the facilities of Bidwell Water Company.

O R D E R

IT IS ORDERED that:

1. On the basis of the record in this proceeding, the Commission determines that respondent Bidwell Water Company (Bidwell) is neither unable or unwilling to adequately serve its ratepayers, nor actually or effectively abandoned by respondents Thomas Jernigan and Vicki Jernigan, nor unresponsive to the rules or orders of the Commission.

2. On the record in this proceeding, the Commission shall not petition for the appointment of a receiver to assume possession of the property of, and to operate the system of, Bidwell pursuant to Public Utilities Code Section 855.

3. Investigation 01-10-002 is closed.

This order is effective today.

Dated _____, at San Francisco, California.